

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Cr.) No.120 of 2020Order reserved on: 4-3-2020Order delivered on: 20-5-2020

1. Saurabh Jaiswal, aged 38 years, S/o Shri Shiv Narayan Jaiswal, Shop No.8, Patel Complex, Padmanabhpur, Durg – 491 001, Tah. & Distt. Durg (C.G.)
2. Shoeulla Khan, aged 44 years, S/o Shri Gulab Khan, R/o MIG-II-64, Bhilai – 490 009, Tah. & Distt. Durg (C.G.), Owner Shop No.16, Patel Complex, Padmanabhpur, Durg – 491 001, Tah. & Distt. Durg (C.G.)

---- Petitioners

Versus

1. Central Bureau of Investigation (C.B.I.), Through Director General of CBI, C.G.O. Complex, Lodhi Road, Jawahar Lal Nehru Stadium Marg, New Delhi – 110 009.
2. The Registrar of Companies, Gwalior, City Center, Gwalior (M.P.)
3. The Assistant Registrar of Firms and Societies, Durg Division, Office Address L.I.G. 258, Padmanabhpur, Durg – 491 001, Tah. & Distt. Durg (C.G.)
4. Bank of Baroda (Nationalised Bank), Through Chief Manager, Bank of Baroda, Padmanabhpur, Durg – 491 001, Tah. & Distt. Durg (C.G.)
5. Bank of Baroda, Through Pradip Kumar Yadav, D.R.M. Bank of Baroda, Sector-10, Bhilai Nagar, Tah. & Distt. Durg (C.G.)
6. Hon'ble District Magistrate, Durg, District Collectorate Office, Durg – 491 001, Tah. & Distt. Durg (C.G.)
7. The Tahsildar, Tahsil Court, Durg – 491 001, Tah. & Distt. Durg (C.G.)
8. Senior Supdt. of Police, Collectorate Office, Durg – 491 001, Tah. & Distt. Durg (C.G.)
9. Smt. Kiran Chauhan, aged about 38 years, W/o Shri Pradeep Chauhan, M.I.G. (C) – 460, Padmanabhpur, Durg – 491 001, Tah. & Distt. Durg (C.G.)
10. Smt. Shobha Jain, aged about 52 years, W/o Shri Prakash Chand Jain, R/o Kamthee Lane, Rajnandgaon – 491 441, Tah. & Distt.

Rajnandgaon (C.G.)

11. Smt. Shanta Kothari, W/o Late Shri Ashok Kumar Kothari, R/o Kamthee Lane, Rajnandgaon – 491 441, Tah. & Distt. Rajnandgaon (C.G.)

12. Messers Dinesh Kumar Laxman Bhai Patel,

13. Shri Dinesh Kumar Patel, Proprietor M/s Dinesh Kumar Laxman Bhai Patel.

14. Mehul Kumar Patel

15. Bhikhu Bhai Patel

16. Smt. Savita Ben Patel

Respondents No.12 to 16 residents of Patel Complex, Padmanabhpur, Durg – 491 001, Tah. & Distt. Durg (C.G.)

---- Respondents

For Petitioners: Mr. V.G. Tamaskar, Advocate.

For Respondents No.4 & 5: -

Mr. Ankit Singhal, Advocate.

For Respondents No.6, 7 & 8 / State: -

Mr. Mateen Siddiqui, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The two petitioners herein have filed this writ petition seeking investigation by Central Bureau of Investigation of the alleged loans advanced by respondents No.4 & 5 in favour of respondents No.12 to 16 and for directing respondent No.1 to investigate and prosecute the defaulters and borrowers namely respondents No.12 to 16 herein.
2. It has been pleaded by the petitioners that respondents No.4 & 5 i.e. Bank of Baroda in collusion with respondents No.12 to 16 have committed fraud on public banks by giving loans amounting to crores of rupees without any proper survey reports and verifications of mortgaged immovable properties which were already sold to the petitioners by

registered sale deeds much before the year 2000 when loan was sanctioned and given to the aforesaid respondents, whereas the petitioners are registered owners of the shops and plots in question. Therefore, CBI enquiry deserves to be directed against the said respondents.

3. The State / respondents No.6, 7 & 8 has filed objection / reply stating inter alia that the two petitioners namely Saurabh Jaiswal and Shoeulla Khan had filed W.P.(C)No.36/2020 (Saurabh Jaiswal and another v. Bank of Baroda and others) against Bank of Baroda against initiating steps for taking possession of the property allegedly owned by the petitioners, but that writ petition has been dismissed on merits on 14-1-2020 and thereafter, the instant writ petition has been filed by the petitioners on 29-1-2020 and as such, the instant writ petition has been filed claiming CBI enquiry which is an afterthought and it deserves to be dismissed with cost.
4. Respondents No.4 & 5 – Bank of Baroda has also filed short objection / reply to the writ petition.
5. Mr. V.G. Tamaskar, learned counsel appearing for the petitioners, would submit that the manner in which the respondent Bank has given loan to respondents No.12 to 16 itself shows that it is a case for investigation by the CBI. He would rely upon the decisions of this Court in the matters of Santosh Kumar Agarwal v. State of Chhattisgarh¹ and Gyan Chand Agrawal v. State of Chhattisgarh² to buttress his submission.

6. I have heard learned counsel for the parties and considered their rival

1 M.Cr.C.No.1117/2002, decided on 16-9-2002

2 M.Cr.C.No.1530/2004, decided on 10-8-2004

submissions and also went through the material available on record with utmost circumspection.

7. The question for consideration is, whether the petitioners have made out a case for issuance of writ for investigation of the impugned transaction by Central Bureau of Investigation?
8. Section 2(h) of the Code of Criminal Procedure, 1973 (for short, 'the Code') defines "investigation" which includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.
9. Investigation usually starts on the information relating to the commission of the offence given to the officer in charge of the police station and duly recorded under Section 154 of the Code. For the purpose of investigation, the offences are divided into two categories—cognizable and non-cognizable. In cognizable offences, the police have statutory power to investigate without the permission of the Magistrate. Section 154 of the Code prescribes the mode of recording the information received orally or in writing by an officer in charge of the police station, in respect of a cognizable offence. Section 156 authorises such an officer to investigate.
10. There are authorities in favour of the view that a police officer can enter the investigation in respect of a cognizable offence even in the absence of the receipt of information. The receipt of information is not the condition precedent for entering the investigation.

11. In the matter of King Emperor v. Khwaja Nazir Ahmed³, the Privy

Council held that in the case of cognizable offences receipt and recording of first information report is not a condition precedent to the setting in motion of criminal investigation and observed as under: -

“In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under [Section 491](#) of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then.”

12. In the matter of **S.N. Sharma v. Bipen Kumar Tiwari and others**⁴, their Lordships have held as follows: -

“7. ... It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Art. 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. ...”

13. Likewise, in the matter of **State of Uttar Pradesh v. Bhagwant Kishore Joshi**⁵, the Supreme Court referring to the definition of expression 'investigation' in Section 4(1) of the Code of Criminal Procedure, 1898

⁴ AIR 1970 SC 786

⁵ AIR 1964 SC 221

which is *pari materia* to Section 2(h) of the Code of Criminal Procedure, 1973 and referring to the observations made by their Lordships of the Supreme Court in the matter of H.N. Rishbud v. State of Delhi⁶ describing the procedure prescribed for investigation under Chapter XIV of the Code of Criminal Procedure, 1898, by a majority decision of Two to one held, that though ordinarily investigation is undertaken on information received by the Police Officer, the receipt of information is not a condition precedent for investigation. It has further been held that Section 157 of the Code prescribes the procedure in the matter of such an investigation which can be initiated either on information or otherwise and that the provision would show that an officer in-charge of a police station can start investigation either on information or otherwise.

14. Likewise, in the matter of M. Narayandas v. State of Karnataka⁷, it has been that if any information disclosing a cognizable offence is laid before an officer-in-charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information and the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the Courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation.

⁶ AIR 1955 SC 196

⁷ 2004 Cri.L.J. 822

15. Likewise, in the matter of Union of India v. Prakash P. Hinduja⁸, it was observed as under: -

“There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate.”

Their Lordships further observed that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary.

16. From the aforesaid analysis, it is quite vivid that for initiation and continuance of investigation, reporting of the commission of cognizable offence is a condition precedent and unless the cognizable offence is said to have been committed, investigation under Section 2(h) of the Code

cannot commence.

17. With regard to the claim of the petitioners for investigation by a specialised agency (CBI), it would be appropriate to refer to the pertinent pronouncements rendered by their Lordships of the Supreme Court in this regard.

18. In the matter of Common Cause v. Union of India⁹, their Lordships of the Supreme Court while considering the scope and ambit of a criminal case being tried or to direct an investigation by CBI, it was held as under: -

“174. The other direction, namely, the direction to CBI to investigate 'any other offence' is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of 'LIFE' and 'LIBERTY' guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of 'LIFE' has been explained in a manner which has infused 'LIFE' into the letters of Article 21.”

19. Similarly, in the matter of Minor Irrigation & Rural Engg. Services v. Sahngoo Ram Arya¹⁰, delineating the scope and jurisdiction of the High Court under Article 226 of the Constitution of India for directing an inquiry by CBI, their Lordships of the Supreme Court held as under: -

“5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need

⁹ (1999) 6 SCC 667

¹⁰ (2002) 5 SCC 521

for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by the CBI. This is a requirement which is clearly deducible from the judgment of this Court in *Common Cause* (supra)."

20. A Constitution Bench of the Supreme Court in the matter of **State of W.B. v. Committee for Protection of Democratic Rights**¹¹ again considering the question of jurisdiction of the High Court under Article 226 of the Constitution of India for directing CBI to investigate cognizable offence in a State without the consent of the State Government, pertinently observed the circumstances on which the investigation by CBI can be directed, as under: -

"70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

21. In the matter of Ram Jethmalani and others v. Union of India and others¹², the Supreme Court in respect of unaccounted money and black money constituted Special Investigation Team by holding as under: -

“56. We note that in many instances, in the past, when issues referred to the Court have been very complex in nature, and yet required the intervention of the Court, Special Investigation Teams have been ordered and constituted in order to enable the Court, and the Union of India and/or other organs of the State, to fulfill their constitutional obligations. The following instances may be noted: *Vineet Narain v. Union of India*¹³, *NHRC v. State of Gujarat*¹⁴, *Sanjiv Kumar v. State of Haryana*¹⁵ and *Centre for Public Interest Litigation v. Union of India*¹⁶.”

22. Their Lordships of the Supreme Court in the matter of Mohd. Haroon and others v. Union of India and another¹⁷, where the prayer was made for constituting SIT or directing CBI to inquire into the communal riots erupted in and around District Muzaffarnagar, Uttar Pradesh in 2013, declined to grant CBI inquiry or constitution of SIT with the following findings: -

“121. In the light of various steps taken by the State, facts and figures, statistics supported by materials coupled with the various principles enunciated in the decisions referred above, we are of the view that there is no need to either constitute SIT or entrust the investigation to CBI at this juncture. However, we are conscious of the fact that more effective and stringent measures are to be taken by the State administration for which we are issuing several directions hereunder.”

23. The Supreme Court in Common Cause (supra) has clearly held that direction to CBI to investigate whether any person has committed an

12 (2011) 8 SCC 1

13 (1996) 2 SCC 199

14 (2004) 8 SCC 610

15 (2005) 5 SCC 517

16 (2011) 1 SCC 560

17 (2014) 5 SCC 252

offence or not cannot be legally given and further, in Minor Irrigation & Rural Engg. Services (supra) has clearly held that such a direction can be given only when there is a prima facie conclusion that there is a need for such an inquiry. In Committee for Protection of Democratic Rights (supra), the Constitution Bench of the Supreme Court has clearly cautioned the Courts by holding that extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.

24. Reverting to the facts of the present case in light of the principles of law laid down by their Lordships of the Supreme Court in the aforesaid judgments qua direction to CBI for investigation, the petitioners cannot claim investigation by CBI or by constituting SIT as a matter of right which can only be directed in making out exceptional and extra-ordinary case having national or countrywide ramification. In sum and substance, my considered opinion is that the petitioners have failed to make out a case for investigation by a specialised agency (CBI) in light of the decisions rendered by their Lordships of the Supreme Court in the above-cited cases (supra), particularly when the substantive writ petition filed by the petitioners against respondents No.4 & 5 Bank has already been dismissed by this Court on 14-1-2020. The writ petition deserves to be and is accordingly dismissed reserving liberty to the petitioners to proceed in accordance with law. No order as to cost(s).

25. It is made clear that this Court has not expressed any opinion about the

merits of the matter. Observation made in this order is only for the purpose to find out whether the matter can be directed to be enquired into by CBI or not.

Sd/-
(Sanjay K. Agrawal)
Judge

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